Filed 6/7/10 In re G.B. CA4/3

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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| In re G.B. et al., Persons Coming Under the Juvenile Court Law. | |
| ORANGE COUNTY SOCIAL SERVICES AGENCY,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>M.B. et al.,<br><br>Defendants and Appellants. | G042910<br><br>(Super. Ct. Nos. DP013454, DP014624)<br><br>O P I N I O N |

Appeals from an order of the Superior Court of Orange County, Gary G. Bischoff, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Sharon S. Rollo, under appointment by the Court of Appeal, for Defendant and Appellant M.B.

Leslie A. Barry, under appointment by the Court of Appeal, for Defendant and Appellant R.M.

Nicholas S. Chrisos, County Counsel, and Karen L. Christensen, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minors.

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The mother and the father of two children appeal from the juvenile court's rejecting the continuing benefit exception to termination of parental rights. For the reasons expressed below, we affirm the order.

I

FACTS

On May 17, 2006, minors N.M., then 14 years old, E.G., then seven years old and G.B., then one year old, were taken into custody by the Santa Ana Police Department and the Orange County Social Services Agency (SSA). A few days earlier, allegations of physical abuse of N.M. by the mother, R.M. were substantiated.

That was the sixth time in less than three years SSA had contact with the family. All of the other contacts involved either physical abuse by the mother or general neglect.

On January 3, 2007, another petition alleging negligence was filed regarding J.B. who was born the previous month. The court removed J.B. also, finding a prima facie case under Welfare and Institutions Code section 319. (All further statutory references are to the Welfare and Institutions Code.)

SSA reported to the court that the mother participated in various voluntary family services and "failed to benefit from the services and continues to make decisions

that place the children at risk." SSA recommended a judicial finding that both G.B. and J.B. will be adopted and that the court terminate parental rights of both of their parents.

On October 16, 2009, the juvenile court found: "The evidence establishes mother maintained regular visitation and father did not. The court finds that neither parent assumed a parental role. The children have been in numerous placements over the years and the court finds insufficient evidence to show that the benefit to the children in having contact with parents outweighs the benefit to them in adoption . . . ." The court further found it is likely the children will be adopted, and ordered the parental rights of both the mother and the father terminated. The parents filed separate appeals.

II

DISCUSSION

The mother argues the juvenile court erred when it did not apply the benefit exception under section 366.26, subdivision (c)(1). The father adopts and joins the mother's arguments.

Citing *In re S.B.* (2009) 46 Cal.4th 529, 532, 537, the county counsel points out that on the March 19, 2009 hearing, the mother stipulated that the termination of parental rights as to both children would not be detrimental to them, and that "if such an order is not challenged it becomes final." The county counsel also argues that similar to *In re Eric A.* (1999) 73 Cal.App.4th 1390, 1394-1395, the mother's stipulation amounts to an admission of fact.

The mother acknowledges the juvenile court did make a finding at the March 19 hearing that termination of parental rights would not be detrimental to the children and that "she stipulated to those findings and orders made and did not lodge an objection or present any evidence." But she contends this court should find she "can challenge the detriment findings including the finding that the beneficial parent-child relationship exception to adoption did not apply."

However we need not decide that issue. Even if the mother had not stipulated to a finding of no detriment, the record before this court shows she failed to present sufficient evidence to the juvenile court to meet her heavy burden at the hearing under section 366.26.

The benefit exception authorizes the juvenile court to avoid terminating parental rights if it finds "'termination would be detrimental to the child [because] . . . [t]he parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.'" (*In re Cliffton B.* (2000) 81 Cal.App.4th 415, 424.) Once a parent fails to reunify with a child during the prescribed statutory period and the juvenile court terminates reunification services, the parent bears the burden of proving termination of parental rights would be detrimental to the child. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350 (*Jasmine D.*).) The benefit exception does not permit a parent to thwart the permanency and stability of adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent. (*Id.* at p. 1348.) Instead, the benefit exception applies only if "the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*).)

*Autumn H.* explains the requisite analytical framework: "[T]he court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*Autumn H., supra,* 27 Cal.App.4th at p. 575.) Thus, "the juvenile court must engage in a balancing test, juxtaposing the quality of the relationship and the detriment involved in

terminating it against the potential benefit of an adoptive family." (*In re Cliffton B., supra,* 81 Cal.App.4th at pp. 424-425.) Factors bearing on the parent-child bond include "[t]he age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs . . . ." (*Autumn H., supra,* 27 Cal.App. at p. 576.)

Even if these factors reveal a strong bond, the parent faces a heavy burden to overcome the Legislature's preferred permanent plan of adoption. (See § 366.26, subd. (b)(1) [identifying adoption as preferred plan]; see also *Jasmine D., supra*, 78 Cal.App.4th at p. 1348 ["Adoption is the Legislature's first choice because it gives the child the best chance at [a full emotional] commitment from a responsible caretaker"]; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419 [the "most permanent and secure alternative" of adoption affords children "the best possible opportunity to get on with the task of growing up"].) Stability and permanence become paramount goals once reunification efforts cease. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) By the section 366.26 hearing, the dependent child "is entitled to stability now, not at some hypothetical point in the future." (*In re Megan S.* (2002) 104 Cal.App.4th 247, 254.) Thus, the statutory exceptions to termination, including the benefit exception, "merely permit the court, *in exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption." (*In re Celine R.* (2003) 31 Cal.4th 45, 53.) We must affirm the juvenile court's conclusion the benefit exception did not apply if substantial evidence supports the order. (*Autumn H., supra,* 27 Cal.App.4th at p. 576.)

The first prong of the benefit exception is regular visitation and contact in a parental role. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1420.) The quantity of contact must be considered within the context of the visitation the parent is permitted. (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1537-1538.) The required showing, however, is difficult to make when the parent has never moved beyond supervised visitation. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.) The second prong of the

exception requires a determination whether a child would benefit from continuing the relationship with the parent, balancing "the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H., supra,* 27 Cal.App.4th at p. 575.)

G.B. was removed when she was one year old, and J.B. shortly after birth. During the mother's visits with the children, monitors noted she was passive and did not interact much with them. Three different monitors noted she overfed them with "sugary snacks." The mother never brought diapers to a visit, "repeatedly ignores [J.B.] when he needs a diaper change" and "never changed a diaper unless a monitor points out that [J.B.] needs to be changed." Monitors reported the mother makes negative facial expressions while changing J.B.'s diaper and remarks that he might make her vomit and that she "tends to give more attention to [G.B.] than to [J.B.]."

J.B. is allergic to corn and was hospitalized for allergic reactions and asthma. At one visit, the monitor asked the mother if a snack she brought contained corn. She denied it did, until the monitor pointed out a picture of yellow corn cobs on the bag. The mother still left the corn puffs on the plate, and remarked that "she is allergic to strawberries and watermelon but she 'eats them all the time.'"

The parents permitted "an unauthorized man to transport the family to a visit. What is more worrisome is that [G.B.] was transported without a car seat. In addition, [the mother] instructed the children to lie to the foster parents and [the social worker]." The social worker noted: "Despite receiving Voluntary Family Services and Family Reunification, [the mother] continues to make poor choices. She is less than forthcoming and even worse, she not only encourages but instructs her children to lie to the foster parents and the undersigned."

The father let months go by without even contacting the social worker regarding visits with the children. When he did visit, the father did play with the children. The social worker assigned to the case for three years testified that in her opinion neither child would be greatly harmed if the court terminated parental rights.

The court stated the "father does not meet the first prong of the test. I don't believe his visitation has been regular. The mother, I think the problem is that she doesn't meet the second prong. I think that it's clear that she's, clearly pleasant. She's clearly, someone that the children love to visit with. They like to play with her when she's, actually, engaged in that part or that aspect of it. I think they look forward to that contact I think very much the way that they would look forward to going to see — maybe going to grandma's house. You know, having a good time there. They get — as counsel points out, they get toys. They get playtime. They get prohibited food. Things that they're not, really, supposed to have, but certainly would like. [¶] There's a lot of things there that would be very attractive to a five-year-old and three-year-old and I'm certain that they, very much, enjoy those visits and I'm certain, as well, that they love both their parents. I think that there's no real question that that's true as well, but I don't believe that the character, certainly, of mother's visits is one of a parental nature. [¶] The evidence seems to suggest that the mother isn't, generally, fully engaged with the children during the visitation. That she, certainly, isn't attune to the needs of, certainly, [J.B.] especially. The reports are replete with instances of monitors having to redirect mother to suggest that she care for his diapering needs, and in fact, I believe I remember reading that there were constant reminders of the mother to bring diapers and those supplies to the visits. And she — according to the report, she never complied with that aspect of it and so I, really, don't see much in the way of a parental figure."

The court concluded: "[G.B.] seems to make friends easily. She attaches easily. That's part of what I think makes her so adorable, so adoptable is that she attaches well to other people. [¶] She seems to have fully attached to her current

caretakers and refers to them as her parents, so it seems to the court when you weigh out the elements and the fact that the — that neither child has, really, lived the majority of their life with the parents, that you take all of it into account, that there really is insufficient evidence to suggest that the benefit that the children would enjoy as a result of contact and visitation with the parents would outweigh the benefit that they would achieve by way of permanency and stability through adoption. [¶] As a result of that, the court, as previously indicated, does continue the children dependents of the Orange County Juvenile Court. I find, by clear and convincing evidence, that it is likely that the children will be adopted and that the children are adoptable. As a result, the court will order that the parental rights of the children's parents . . . be terminated pursuant to 366.26 of the Welfare and Institutions Code." The court further found "termination is in the children's best interest."

Under the circumstances in the record before us, substantial evidence supports the juvenile court's order that the benefit exception does not apply to either parent. We find no error.

III

DISPOSITION

The order of the juvenile court is affirmed.

MOORE, J.

WE CONCUR:

SILLS, P. J.

ARONSON, J.